Supreme Court, U.S.
FILED
OCT 4 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-419

In The
Supreme Court of the United States
October Term, 1985

GENERAL DRIVERS AND HELPERS UNION, LOCAL NO. 554, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner,

vs.

MID-CONTINENT BOTTLERS, INC., (Omaha Division), an Iowa Corporation,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

GEORGE C. ROZMARIN
SWARR, MAY, SMITH & ANDERSEN, P.C.
3535 Harney St.
Omaha, Nebraska 68131
(402) 341-5421

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

BEST AVAILABLE COPY

7 pp

QUESTION PRESENTED FOR REVIEW

Respondent disagrees with petitioner's statement of the question presented for reasons set forth in respondent's Statement of the Case. The question more appropriately framed would be whether the Court of Appeals erred in finding the dispute submitted was subject to arbitration.

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	1
ARGUMENT	2
1. Summary of Argument	2
2. Reasons for Denying the Petition	2
CONCLUSION	4

No. 85-419

In The

Supreme Court of the United States

October Term, 1985

GENERAL DRIVERS AND HELPERS UNION, LOCAL NO. 554, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner,

vs.

MID-CONTINENT BOTTLERS, INC., (Omaha Division), an Iowa Corporation,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

STATEMENT OF THE CASE

Respondent disagrees with petitioner's statement in the following particulars. Petitioner filed a complaint seeking specific performance of the collective bargaining agreement. Respondent's motion for summary judgment,

asserting that the dispute was subject to the grievance and arbitration provision of the agreement, was resisted by petitioner and was overruled by the district court. The parties stipulated as follows: "Neither party has filed a grievance pursuant to the collective bargaining agreement or requested of the other party that the dispute be submitted to arbitration." (App. 90, ¶ 8)

The circuit court stated that "the Union claims the only matter for resolution is the amount of compensation the bargaining unit members should have received after the Company implemented its new sales program." Petitioner prayed for and the district court awarded the compensation rates set forth in the agreement. (App. 32) Because the dispute was subject to Article VI of the agreement, "Grievance Procedure and Arbitration," the circuit court held that the action should have been dismissed.

ARGUMENT

Summary of Argument

The dispute was subject to the grievance and arbitration provision of the collective bargaining agreement. Petitioner did not request arbitration, nor did it file its action to compel arbitration. The circuit court's decision was, thus, correct and consistent with public policy and this Court's prior decisions.

Reasons for Denying the Petition

There is no conflict between circuits on the issue decided. Under this Court's *Steelworkers Trilogy* and its

progeny in all circuits, proper deference was given to the unambiguous language of the agreement which provided in pertinent part as follows:

> Any controversy arising over the interpretation of, or adherence to, the terms or provisions of this Agreement shall be settled by negotiations between the Union and the Employer. Any grievance must be presented to the Employer within seven (7) working days after occurrence of the event giving rise to the grievance, or it shall be considered waived. Such controversy may be referred to arbitration. . . .

Petitioner sought, and obtained from the district court, an order which, upon an adjudication of the merits, applied the stated contract rates. Petitioner did not seek rates which were yet to be determined. In other words, the choice presented to the lower courts was between the Respondent's wage rates, implemented upon impasse in negotiation, and the pre-reopener contract rates. The dispute did not involve interest arbitration.

Petitioner, for the first time herein, cites to Article II of the Agreement. That provision as quoted by petitioner, however, refers to the grievance and arbitration provisions of the Agreement, which petitioner did not invoke. The cases relied upon by the petitioner involved actions by a union to compel arbitration, just the opposite of petitioner's position in this action.

It is questionable whether there exists a current split in circuits on the abstract issue as framed to the Court by petitioner; the *Potter Press* case cited by petitioner was decided prior to the *Trilogy*. However, because of the manner in which the issue in dispute was framed to the lower courts and the manner in which the lower courts decided the dispute, the issue of interest arbitration is irrelevant.

Finally, the issue presented by petitioner in no other way meets the criteria justifying certiorari.

———o———

CONCLUSION

For the reasons stated above it is submitted that the decision of the court of appeals in this case does not warrant review by this Court and that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

/s/ Geroge C. Rozmarin
Swarr, May, Smith & Andersen, P.C.
3535 Harney St.
Omaha, Nebraska 68131
(402) 341-5421

Counsel for Respondent